

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

KENNETH THUNDERBIRD,

Case No. 08-cv-01404-PK

Plaintiff,

ORDER

v.

OREGON STATE DEPARTMENT OF
CORRECTIONS Employees, Agents,
Agencies, Public Entity; et al.,

Defendants.

HAGGERTY, District Judge:

Magistrate Judge Papak issued a Findings and Recommendation [227] in this action recommending that the sole remaining defendant's (Gulick) Motion for Summary Judgment [178] be granted, and that plaintiff's Motion for Summary Judgment [198], Motion for Order [207], Motion to Compel Docket Entry [217], and Motion to Compel [221] be denied.

Plaintiff, acting *pro se*, filed a Motion for New Trial [230] and supplemental briefing that this court construes as plaintiff's objections to the Findings and Recommendation. For the following reasons, the Findings and Recommendation is adopted in its entirety.

STANDARDS

When a party objects to any portion of a Findings and Recommendation, the district court must conduct a *de novo* review. 28 U.S.C. § 636(b)(1)(B); *McDonnell Douglas Corp. v. Commodore Bus. Mach. Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). The court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1).

ANALYSIS

This case has a lengthy procedural history that is reviewed thoroughly and accurately in the Findings and Recommendation [227] and will not be recounted here. The factual background is set forth in a prior Findings and Recommendation [148] that this court adopted twice [151 and 163]. Following this court's adoption of the Findings and Recommendation [148] only Gulick remained as a defendant. The sole surviving 42 U.S.C. § 1983 claims allege that Gulick, acting in his personal capacity, violated plaintiff's Eighth Amendment rights when he: (1) reduced plaintiff's Neurontin in December 2007; (2) refused to reasonably accommodate plaintiff's request for sweat pants in February 2008; (3) deprived, denied, or confiscated plaintiff's tinted eyeglasses in February 2008; and (4) prescribed plaintiff Propranolol in April 2008.

In short, Magistrate Judge Papak recommends granting defendant's Motion for Summary Judgment on the basis that there is no genuine dispute of material fact regarding plaintiff's claims in-so-far as there is no evidence establishing that defendant took "acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." *Wood v. Housewright*, 900 F.2d 1332, 1334 (9th Cir. 1990) (citation omitted).

In response to the Findings and Recommendation, plaintiff has filed voluminous briefing

and supporting exhibits. A substantial portion of plaintiff's objections pertain to claims and parties previously dismissed from this litigation. The court construes those portions of plaintiff's objections as a motion for reconsideration and denies that motion. The remainder of plaintiff's objections assert in part that there are issues of material fact; that there is newly discovered evidence establishing the truth of his claims; that defendants have withheld evidence; that defendants have committed fraud, perjury, and witness tampering; and that the various legal theories not applicable to this case require a new trial.

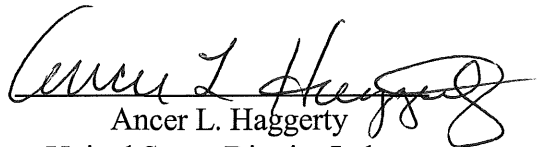
This court has reviewed the entire record, including the supposedly new evidence submitted in support of his objections, and has conducted a *de novo* review of the Findings and Recommendation. The court finds no cause to reject or revisit Magistrate Judge Papak's recommendations. The Findings and Recommendation is well reasoned and without error. This court adopts it in its entirety.

CONCLUSION

For the reasons provided, defendant Gulick's Motion for Summary Judgment [178] is GRANTED and plaintiff's Motion for Summary Judgment [198], Motion for Order [207], Motion to Compel Docket Entry [217], Motion to Compel [221] and Motion for New Trial [230] are DENIED.

IT IS SO ORDERED.

DATED this 28 day of June, 2012.


Ancer L. Haggerty
United States District Judge